Supreme Court, U.S.
FILED
92051 JUN 21 2000
OFFICE OF THE CLERK

No.

In The

# Supreme Court of the United States

Fred Davis

Gertrude Davis Gorod

v. *Petitioners,*

Robert G. Funke

*Respondent.*

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

## PETITION FOR WRIT OF CERTIORARI

Fred Davis
Gertrude Davis Gorod
371 Bryant Street
Malden, Massachusetts 02148
(781) 322-8223

49pp

## ISSUES PRESENTED

I.

Should this Honorable Court grant certiorari to protect the public interest from justices who are obstructing justice in the Massachusetts court system.

II.

Should the Honorable Court grant certiorari to protect the public interest from justices who are committing criminal acts against litigants, and telling other justices what decisions they are to make in other legal actions, not only in their county but actions in other venues.

III.

Should the Honorable Court grant certiorari to protect the Constitutional Rights of the petitioners and the citizens residing in the state of Massachusetts.

IV.

United states Constitution Amendment V: state in pertinent part: "Cannont be deprived of life, liberty or property without due process of law."

V.

United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

VI.

Should the Honorable Court grant certiorari when the petitioners were deprived of the right to Adverse Possession pursuant to Massachusetts General Laws 260 section 21.

VII.

Should the Honorable Court grant Certiorari to disbar attorney Robert Funke for committing fraud, and taking monies from an estate.

VIII.

Should the Honorable Court Grant Certiorari when the court erred and did not let the petitioner, Gorod testify on her portion of the action.

IX.

Should the Honorable Court grand Certiorari when the inferior court erred in its decision based on the facts and evidence presented.

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UNITED STATES CONSTITUTION

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Petitioners, Fred Davis and Gertrude Davis Gorod, respectfully pray that a writ of certiorari issue to review the decision of the Massachusetts Supreme Judicial Court.

Protect the public interest from justices who are obstructing justice.

Protect the public from justices who are telling other justices how to rule on cases.

Protect the public from justices giving out legal advise to individuals and attorneys how to get cases dismissed.

Protect the public and the petitioners their Constitutional Rights of due process of law and equal protection of the law.

The public has a right to go into the Massachusetts courts and have a decision made on the facts and evidence present to the court.

Not a decision based on what another justice told him/her to make.

Justice in the Massachusetts Courts does not exist.

Based on the facts and evidence, the complete justice system in Massachusetts is headed for a complete disaster, unless immediate action is taken to correct the matter.

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## OPINIONS BELOW

The Massachusetts Land Court allowed Petitioners Motion For Lis Pendens attached (App. P. 6)

The Massachusetts Land Court dismissed the Complaint attached (App. p. 27).

The Massachusetts Supreme Judicial Court denied Direct Appellate Review attached (App. P. 28).

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## JURISDICTION

March 29, 2000, the Massachusetts Supreme Judicial Court denied Direct Appellate Review attached (App. P. 28).

The petition is filed within 90 days of the Massachusetts Supreme Judicial Court's decision.

The Court's jurisdiction is invoked under 28 of the United States Code.

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## UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part: "Cannot be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment to the United States Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof: are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any

person of life, liberty, or property, without due process of law".

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## STATEMENT OF THE CASE

December 7, 1999, the petitioners filed a Complaint in the Massachusetts Land Court For Adverse Possession on parcels of properties located in the Town of Raynham, and filed a Motion For Lis Pendens.

December 8, 1999, Petitioners Motion For Lis Pendens was allowed by the court attached (App. P. 6).

December 13, 1999, respondent, Robert G.Funke filed his answer to the petitioner Complaint.

December 29, 1999, Petitioners filed their Motions in Opposition to Defendant's Answer.

January 10, 2000, respondent, Robert G. Funke files Motion to Dismiss Complaint attached to this document is a court order signed by Judge Malcolm Jones of the Bristol County Probate & Family Court which states as follows: **"ANY PARTY OR ATTORNEY CURRENTLY A DEFENDANT IN A COMPLAINT OR SUIT IN ANY VENUE BROUGHT BY RESPONDENTS FRED DAVIS AND GERTRUDE DAVIS GOROD (OR IF THE PROPERTY IN QUESTION IS SUBJECT TO LIS PENDENS BY THEM), IS ENcouraged TO BRING THIS ORDER TO THE ATTENTION OF THAT COURT TOGETHER WITH A PRAYER TO DISMISS SAID ACTION AND DISSOLVE SAID LIS PENDENS" ATTACHED ( APP. P. 14).**

Petitioners were informed by the Land Court that the hearing was scheduled for January 19, 2000 at 2:00 P. M., however, when petitioners arrived at the court at 1:45 P.M., they were informed that the hearing was already heard at 10:00 A. M. and the Defendant's Motion To Dismiss was allowed.

January 19, 2000, Judgment was entered dismissing the Complaint.

January 19, 2000, Petitioners filed Motion for New Hearing and Motion For Reconsideration.

January 19, 2000, Appellants filed their Notice of Appeal.

February 18, 2000, Petitioners Motion For Reconsideration was heard by the Land Court and was denied orally by the court.

March 29, 2000, The Massachusetts Supreme Judicial Court denied the Petitioners Direct Appellate Review.

Now the issues are before this Honorable Court for review.

## ARGUMENT

### REASONS FOR GRANTING THE PETITION

### I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PUBLIC INTERST FROM JUSTICES WHO ARE OBSTRUCTING JUSTICE IN THE MASSACHUSETTS COURTS

The public is denied justice, when presenting facts, witnesses and evidence does not mean a thing in the court's decisions.

Decisions are no longer made by the justice hearing the case, but made by judges who are bias and prejudice against the litigants attached (App. P. 14)

**SEE THE MATTER OF JUDGE JOHN A. MARKEY & JUDGE PRUDENCE MCGREGOR IN THE BRISTOL DISTRICT COURT SYSTEM** "Supreme Judicial Court of Massachusetts argued June 10, 1998, Decided July 14, 1998, Mass 797 (1998) Sanctions were placed on judges for their misconduct. "Judge Markey informed Judge McGregor how he wanted her to rule on a divorce action."

"Judge McGregor ruled on the divorce action exactly as she was instructed to do by Judge Markey.

## II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PUBLIC INTEREST FROM JUSTICES INSTRUCTING OTHER JUSTICES TO MAKE DECISIONS NOT ONLY IN THEIR COUNTY BUT IN OTHER VENUES

Judge Malcolm Jones over stepped his bound by violating the Judicial Conduct when he gave legal advise to any party, lawyer, or court, etc. By: Judge Jones: "Any party or attorney currently a defendant in a complaint or suit in any venue brought by respondents Fred Davis and Gertrude Davis Gorod (or the property in question is subject to a lis pendens by them), is encouraged to bring this order to the attention of that court together with a prayer to dismiss said action and dissolve said pendens" attached (App. P. 14).

## III. CERTIORARI SHOULD BE GRANTED TO PROTECT BOTH THE UNITED STATES CONSTITUTIONAL RIGHTS AND THE MASSACHUSETTS CONSTITUTIONAL RIGHTS OF THE PETITIONERS AND THE CITIZENS OF THE COMMONWEALTH OF MASSACHUSETTS

Judge Malcolm Jones' despicable behavior reveals his bias and prejudices toward the petitioners when he made a special order which would deprive the petitioners of both their United States Constitution Rights and the Massachusetts Constitution.

The petitioners cannot be deprived of the right to due process of law and the equal protection of the law.

The petitioners have the legal right to find remedies for all wrongs inflicted upon them by Judge Malcolm Jones this guarantee is set forth in the Massachusetts Constitution.

Judge Malcolm Jones made an order that states as follows: "It is ordered that nothing further in this matter shall be accepted for filing by respondents Fred Davis and Gertrude Davis Gorod unless specifically authorized by the undersigned or unless four justices authorize the filing of same. No appeal from this order may be had, and none accepted for filing, unless specifically directed in writing by the Appeals Court attached (App. P. 13). Judge Jones refers to a highlighted portion of the rescript of the Supreme Judicial Court which he states was attached to his document, however, there was no attachments to his order.

Judge Malcolm Jones' order to go to him for permission to appeal his decision is nothing but a conflict of interest.

In addition, Massachusetts Rules of Civil Procedure allows anyone the right to appeal any court decision when they are aggrieved by the court's decision.

Both the United States Constitution Amendments V and XIV guarantees the right to due process of law and equal protection of the law.

The Massachusetts Constitution guarantees all citizens residing in the Commonwealth of Massachusetts have the legal right to find remedies for all wrongs inflicted upon them.

## IV. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITTIONERS FROM BEING DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS AS SET FORTH IN THE UNITED STATES CONSTITUTION

The United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law".

The United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life,

liberty or property, without due process of law: nor deny any person within its jurisdiction the equal protection of the law.

Due process of law and equal protection of the law is a fundamental constitutional guarantee that no state shall deprive any person the right to due process of law and equal protection of the law.

## V. CERTIORARI SHOULD BE GRANTED BECAUSE THE PETITIONERS WERE DEPRIVED OF THE RIGHT TO ADVERSE POSSESSION

**Massachusetts General Laws 260 section 21 Adverse Possesion: "Person has the rights to Adverse Possesion":**

**(1) using the land and property for twenty years or more.**

**(2) paying taxes**

**(3) cultivate the land, and farming.**

Since 1979, the petitioner, Gorod, cultivated the land and did planting at the property located at Raynham, Massachusetts.

Gorod, in addition, paid portions of some real estate and water bills (App. P. 5).

Petitioner, Fred Davis, paid real estate and water bills on properties located at Broadway Raynham, Massachusetts (App. P. 7 and P. 8).

Petitioner made repairs to said property and used the property to make repairs to automobiles, used the garages (App. P. 4).

Petitioners took possession of said properties without the permission from the owners.

Based on the facts and evidence the petitioners are entitled to Adverse Possession of these properties as a matter of law.

**VI. CERTIORARI SHOULD BE GRANTED BECAUSE OF ATTORNEY ROBERT FUNKE COMMITTED FRAUD, AND TOOK MONIES BELONGING TO AN ESTATE**

The respondent, Funke misrepresented and misled the court when he informed the court that there was another action pending.

This information he supplied to the court is not the truth and was done in bad faith with actual intent to deceive and fraud the court SEE **GROH v. VIGLET** 34 **Ohio Law R 132 "An act done with the actual intent to mislead or deceive another is an act in bad faith".**, **HIGHENBERG v. NORTHRUP** 33 **N.R. 786,787, 134 92 "Bad faith and fraud are synonymous".**

The respondent, Funke stated that he informed all other parties, however, there was no opposition from any other party except the respondent, Funke.

The petitioners Davis and Gorod filed their Complaint in the Land Court for Adverse Possession and Lis Pendens on December 7, 1999 (App. P. 1) and (App. P. 3).

Respondent, Funke's appointment as Commissioner expired on September 24, 1999 (App. P. 13).

After the petitioners filed their Complant, in the Land Court, respondent, Funke again went into court to become commissioner again on December 23, 1999.

(App. P. 14).

The respondent's acts has all the markings of a cover-up to cheat the petitioners of their legal right to Adverse Possession which they are entitled to as a matter of law.

Although the respondent, Funke was appointed commissioner by Judge Malcolm Jones, there is a legal question whether he has/had any legal right at all to perform as a commissioner as he never made oath that he would faithfully and impartially execute the duties assigned by him.

Canon 1 Disciplinary Rules DRI-102 (A) a lawyer shall not: (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation. (5) Engage in conduct that is prejudicial to the administration of justice.

General Laws 211 § 38 Attorney's Oath: "Your (name) solemnly swear that you will do no falsehood, nor consent to the doing of any in Court"

Respondent violated the Canon Rules and the Attorney's Oath.

Respondent, Funke committed fraud when he filed a document for reimbursement of traveling 160 miles from Taunton to Boston and return which is only seventy-two miles.

In addition, respondent, Funke committed perjury in his Certificate of Services (App. P. 12 ) he states that he mailed all parties on January 5, AD 2000, however, he did not mail documents to the petitioner Davis on January 5, AD 2000 he mailed it on January 8, 2000 (App. P.20).

Respondent, Funke committed perjury in his Certificate of Services (App. P. 12), he states that he mailed all parties on January 5, AD 2000, however, he did not mail documents to the petitioner Gorod on January 5, AD 2000, he mailed it on January 6, 2000 (App. p. 26).

Respondents acts of fraud and perjury fortifies, the fact that the respondent, Funke lacks honesty and credibility.

Respondent, Funke received a $10,000.00 deposit on the sale of real estate belonging to the estate (App. P. 9).

Respondent, Funke said that the money was going to be deposited in the People's Savings Bank in Taunton, Massachusetts, however, that was not the case.

February 7, 2000, Funke was given the balance of $50,000.00 (App. P. 9)

February 7, 2000, after receiving a total of $60,000.00, belonging to the estate, he only deposited $50,636.71 in the Bank Boston (App. P. 10).

The facts and evidence clearly shows that $9,363.29, is missing from monies belonging to the estate.

Mr. Funke has violated the Canon Rules and has violated the Attorney's Oath, therefore, Mr. Funke must be barred from practicing law in the United States of America.

## VII. CERTIORARI SHOULD BE GRANTED BECAUSE THERE WAS NOT A FAIR TRIAL, PETITIONER WAS NOT ALLOWED TO TESTIFY IN HER PORTION OF THE ACTION

Both petitioners, Fred Davis and Gertrude Davis Gorod filed their Complaint in the Land Court (App. P. 1).

Petitioner, Davis testified before the court and submitted his evidence.

However, a very strange thing occurred in the courtroom, after the petitioner, Davis testified and the judge left the courtroom, a clerk came over to the petitioner, Davis and gave him all the evidence back that he submitted to the court.

Davis asked her why she was returning the evidence that he submitted to the court.

There was no response from her.

Petitioner, Gorod was deprived of her legal right to testify regarding her portion of the action before the court.

Petitioner, Gorod was also deprived of her Constitutional Rights of equal protection of the law and due process of the law.

The petitioners, Davis and Gorod suffered a severe miscarriage of justice in the Land Court of Massachusetts.

**VIII. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURT ERRED IN ITS DECISION BASED ON THE FACTS AND EVIDENCE PRESENTED TO THE COURT**

The inferior court was given evidence to substantiate the fact that the petitioners, Fred Davis and Gertrude Davis Gorod has fulfilled all requirements of the law to obtain Adverse Possession of properties located in Raynham, Massachusetts.

The facts and evidence clearly reveals that the inferior court erred in its decision because the inferior court based its decision on how Judge Malcolm Jones instructed the Land Court how to rule on this action (App. P. 14).

Justice in Massachusetts is completely out of control, when judges instruct other judges on how they should rule on cases **SEE THE MATTER OF JUDGE JOHN A. MARKEY & JUDGE PRUDENCE MCGREGOR IN THE BRISTOL, DISTRICT COURT SYSTEM MASS 797 (1998).**

The bottom line is justice must be restored in Massachusetts as soon as possible.

**CONCLUSION**

**WHEREFORE,** the petitioners, Fred Davis and Gertrude Davis Gorod respectfully prays that a Writ of Certiorari issue to review the decision of the inferior Massachusetts Court in order to correct the miscarriage of justice that was inflicated

upon them and protect the public interest from a corrupt judicial system in the Commonwealth of Massachusetts.

Respectfully submitted,

Ms. Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

Mr. Fred Davis
353 Bryant Street
Malden, Ma 02148
(781) 322 8223

App. 1

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

LAND COURT DEPARTMENT

CASE NO.
260693

BRISTOL, SS.

FRED DAVIS
GERTRUDE DAVIS GOROD,
PLAINTIFFS

VS.

ROBERT G. FUNKE, - DEFENDANT

COMPLAINT TO ESTABLISH TITLED OF REAL PROPERTY
BY ADVERSE POSSESSION

PLAINTIFFS IN THE ABOVE-ENTITLED MATTER DECLARE THE FOLLOWING:

PARTIES

1) Plaintiff Fred Davis resides at 353 Bryant Street Malden, Massachusetts.
2) Plaintiff Gertrude Davis Gorod resides at 371 Bryant Street Malden, Massachusetts.
3) Defendant Robert G. Funke is located at 58 Tremont Street Taunton, Massachusetts 02780.

STATEMENT OF FACTS

1) The cause of action arises out of properties that have continuously used by the plaintiffs as recorded in Book 1223 page 397 plot 57 plan 3 and plot 75 plan 3.
2) Taxes and water bills have been paid by the plaintiffs.

**WHEREFORE**, the plaintiffs request that the Honorable Court find and determine that plaintiffs acquire title to said properties by Adverse Possession free of any claims.

By,
s/ Fred Davis, Plaintiff
353 Bryant Street
Malden, Ma 02148
(781) 322-8223

s/Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

December 7, 1999

App. 3

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

LAND COURT DEPARTMENT

BRISTOL, SS.

CASE NO.
260693

FRED DAVIS
GERTRUDE DAVIS GOROD,
PLAINTIFFS

VS.

ROBERT G. FUNKE,
DEFENDANT

MOTION FOR APPROVAL OF LIS PENDENS

Now comes the plaintiffs, and hereby request the Honorable Court to approve Lis Pendents on properties located at Broadway Raynham as recorded in Book 1223 Page 397 plot 57 plain 3 and plot 75 plan 3.

**WHEREFORE**, the plaintiffs request their motion will be granted.

s/Fred Davis, Plaintiff
353 Bryant Street
Malden, Ma 02148
(781) 322 8223
s/Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

December 7, 1999

**AFFIDAVIT OF FRED DAVIS**

I, Fred Davis, being first duly sworn and say:

1. I am one of the plaintiffs in the action of Fred Davis & Gertrude Davis Gorod Case No. 260693.
2. I have paid real estate and water bills on the properties located on Broadway Raynham, Massachusetts.
3. I have made repairs to said property.
4. I have used the property to make repairs to automobiles.
5. I have used the garages on said property.
6. I have read the foregoing and swear that it is true to the best of my knowledge and belief.

s/Fred Davis

Dated:

On this 14th day of January 2000, Fred Davis personally appeared before me and being by me first duly sworn, did make oath and say that the matter set forth in the foregoing Affidavit is true to his own knowledge and belief.

s/ Illegible
Notary Public

**AFFIDAVIT OF GERTRUDE DAVIS GOROD**

I. Gertrude Davis Gorod, being first duly sworn and say:

1. I am one of the plaintiffs in the action Fred Davis & Gertrude Davis Gorod Case No. 260693.
2. I have cultivated the land and did planting, etc.
3. I have paid portions of some real estate and water bills located at Broadway Raynham, Massachusetts.

s/Gertrude Davis Gorod

Date:

On this 14th day of January 2000, Gertrude Davis Gorod personally appeared before me and being by me first duly sworn, did make oath and say that the matter set forth in the foregoing affidavit is true to her own knowledge and belief.

s/Illegible
Notary Public

App. 6

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

Bristol, ss. Miscellaneous Case No. 260693

Fred Davis and
Gertrude Davis Gorod, Plaintiffs

vs.

Robert G. Funke , Defendant

**FINDING**

I hereby find facts sufficient to determine that the matter concerns a claim to title and interest in the real property in Raynham Described in a deed recorded with the Bristol County (North District) registry of Deeds in Book 1223, Page 397.

s/Illegible
Justice of the
Land Court

Entered: December 8, 1999

App. 7

FRED DAVIS
353 BRYANT ST
MALDEN MA 02148

113

October 25, 19 95 53-7076/2113

PAY TO THE ORDER OF Collector of Taxes Town of Raynham $ 330.87

---Three hundred & thirty---------- 87/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Hollision, Hopkinton

MEMO Nov. Taxes & Water

Fred Davis

⑆211370765⑆ ⑈430 0082 43⑈ 0113 ⑈00000330870⑈

FRED DAVIS
353 BRYANT ST
MALDEN MA 02148

116

June 15, 19 99 53-7076/2113

PAY TO THE ORDER OF Town of Raynham $ 1,654.61

One Thousand Six Hundred & Fifty-four 61/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Hollision, Hopkinton

MEMO Paid in full

Fred Davis

⑆211370765⑆ ⑈430 0082 43⑈ 0116 ⑈00001654610⑈

FRED DAVIS
353 BRYANT ST
MALDEN MA 02148

117

June 15, 19 99 53-7076/2113

PAY TO THE ORDER OF North Raynham Water District $ 199.01

One hundred & Ninety-nine 01/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Hollision, Hopkinton

MEMO Paid in full

Fred Davis

⑆211370765⑆ ⑈430 0082 43⑈ 0117 ⑈00000199010⑈

BEST AVAILABLE COPY

FRED DAVIS
353 BRYANT ST
MALDEN MA 02148

114

PROCESSED June 30, 1996 53-7076/2113

PAY TO THE ORDER OF Treasurer Town of Raynham $ 509.72

Five hundred nine & 72/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Holliston, Hopkinton

MEMO Trust Expense

⑈211370765⑈ ⑆430 0082 43⑆ 0114 ⑈0000050972⑈

FRED DAVIS
353 BRYANT ST
MALDEN MA 02148

127

June 10, 1996 53-7076/2113

PAY TO THE ORDER OF Town of Raynham $ 1,817.21

One thousand Eight hundred seventeen 21/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Holliston, Hopkinton

MEMO Paid in full

⑈211370765⑈ ⑆430 0082 43⑆ 0127 ⑈0000181721⑈

FRED DAVIS
353 BRYANT ST
MALDEN, MA 02148

109

PROCESSED July 29, 1995 53-7076/2113

PAY TO THE ORDER OF Town of Raynham $ 330.90

Three hundred thirty 90/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Holliston, Hopkinton

MEMO

⑈211370765⑈ ⑆430 0082 43⑆ 0109 ⑈0000033090⑈

FRED DAVIS
353 BRYANT ST
MALDEN MA 02148

115

June 27 1997 53-7076/2113

PAY TO THE ORDER OF Treasurer of Raynham $ 1,549.03

One thousand five hundred forty-nine 03/100 DOLLARS

THE BANK FOR SAVINGS
Malden, Saugus, Holliston, Hopkinton

MEMO Trust Expense

⑈211370765⑈ ⑆430 0082 43⑆ 0115 ⑈0000154903⑈

EAGLE BANK
Everett, Massachusetts 02149

01 30668

January 28, 2000

PAY TO THE ORDER OF FRED BOVIS $5,000.00

570

030239484 02 4507 4517 020100

FIVE THOUSAND DOLLARS AND No CENTS

OFFICIAL CHECK

MEMO

TELLER 0:0343 TERMINAL 0:1343

⑈0130668⑈ ⑆211371133⑆ 86000200 5⑈ ⑈0000500000⑈

EAGLE BANK
Everett, Massachusetts 02149

01 30669

January 28, 2000

PAY TO THE ORDER OF FRED BOVIS $5,000.00

030239485 02 4507 4517 020100

FIVE THOUSAND DOLLARS AND No CENTS

OFFICIAL CHECK

MEMO

TELLER 0:0343 TERMINAL 0:1343

570

⑈0130669⑈ ⑆211371133⑆ 86000200 5⑈ ⑈0000500000⑈

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

EAGLE BANK
Everett, Massachusetts 02149

01 30774

February 03, 2000

NOT NEGOTIABLE

PAYABLE TO FRED BOVIS $50,000.00

FIFTY THOUSAND DOLLARS AND No CENTS

OFFICIAL CHECK

MEMORANDUM

MEMO PAID IN FULL

FOR

TELLER 0:0343 TERMINAL 0:1349

⑈0130774⑈ ⑆211371133⑆ 86000200 5⑈

**OFF-LINE SAVINGS AND CD NEW ACCOUNT DEPOSIT**

BankBoston

DATE OPENED 6/7/88 OPENED BY

MATURITY DATE

NAME (Please Print)

ADDRESS CO

CITY STATE ZIP

*PLEASE REMEMBER TO FILL IN ALL NINE BOXES BELOW
ALL SAVINGS ACCOUNT NUMBERS ARE NINE DIGITS

*PLAN TYPE

All items are received by the Bank for the purpose of collection and all credits for items are provisional
V-3529AA Rev 4/87

1323-01251 068

ENDORSE AND LIST CHECKS SEPARATELY

| | |
|---|---|
| CASH | • |
| CHECKS | 50000.— |
| | 636.71 |
| SUBTOTAL | • |
| LESS CASH BACK | • |
| $ | 50636.71 |

RECEIPT COPY 2

App. 11

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
LAND COURT DEPARTMENT

BRISTOL, SS. CASE NO. 260693

FRED DAVIS &
GERTRUDE DAVIS GOROD, Plaintiffs

vs.

ROBERT G. FUNKE, Defendant

DEFENDANT'S MOTION FOR DISMISSAL UNDER R. 12(b)(9)

Now comes the defendant and moves for the dismissal of the complaint as authorized by Rule 12 (b)(9), on the grounds of the pendency of a prior action in a commonwealth, as more particularly set forth in the following memorandum.

MEMORANDUM

This is an action to establish title to certain premises by adverse possession, and the filing of a notice of lis pendens has been approved by order of this court.

As appears by defendant's answer to the complaint the defendant does not claim and has never claimed to own any interest in said premises.

Defendant's only involvement with said premises arises out of his duties as commissioner appointed in a warrant issued by the Bristol County probate & Family Court on March 24, 1999, in Equity Case No. 96E0055-PP (being an action for partition of the land described in this complaint), copy of which is annexed to his answer as Append-

ix A.

Since the filing of the answer to the complaint the Bristol County Probate & Family Court on December 23, 1999, has entered an order extending said warrant to March 24, 2000, a copy of which order is annexed hereto as Appendix B.

The attention of this court is respectfully called to the last paragraph of the order in Appendix B, which the justice of the Bristol County Probate & Family Court encourages defendant to bring this order to the attention of this court together with a prayer to dismiss this action and dissolve said lis pendents.

Under its plenary equity jurisdiction in the context of said Equity Case for partition, said Bristol County Probate & Family Court has full authority to deal with the ownership issues raised by this complaint in the Land Court, since title is always a fundamental issue in any action for partition.

There is no legitimate purpose to be served by allowing these plaintiffs to present their ownership claims in more than one court at the same time.

S/ Robert G. Funke BBO # 181500
58 Tremont St., PO Box 628
Taunton, Ma 02780
(508) 823-0759

CERTIFICATE OF Service

I hereby certify that I have served a true copy of the foregoing document upon all other parties of record by mail on January 5, AD 2000.

S/ Robert G. Funke

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL, SS. DOCKET NO. 96E0055-PP

Edith S. Tabachnick, Plaintiff-Petitioner

vs.

Fred Davis and Gertrude Davis Gorod, Defendants, Respondents

ORDER

The warrant of Commissioner Robert Funke be extended nunc pro lunc to September 24, 1999 and ending March 24, 2000. The commissioner is ordered to consummate sale of the property as expeditiously as possible.

The Court finds that this matter has been fully adjudicated at both this and the Appellate levels (see attached. Respondents Fred Davis and Gertrude Davis Gorod have submitted numerous filings and lawsuits in various Courts which no way rise to the level of acceptable legal argument of standards. Rather, they have done everything to possible to annoy, harass and frustrate the ends of justice.

This judge previously order of January 26, 1998 that nothing further was to be filed without leave of the Court. See also the highlighted portion of the rescript opinion of the Supreme Judicial Court Attached hereto. **(THERE WAS NO ATTACHMENTS TO THE COPIES OF THE ORDER THAT WAS MAILED TO THE PETITIONERS IN THIS ACTION).**

**APPENDIX "B"**

Despite these orders, redundant and friovolous pleadings, complaints and suits by the respondents have been filed. Accordingly, IT IS ORDERED that nothing further in this matter shall be accepted for filing by respondents Fred Davis and Gertrude Davis Gorod unless specifically authorized by the undersigned or unless four justices authorize the filing of same. No appeal from this order may be had, and none accepted for filing, unless specifically directed in writing by the Appeals Court.

Any party or attorney currently a defendant in a Complaint or suit in any venue brought by respondents Fred Davis and Gertrude Davis Gorod (or if the property in question is subject to lis pendens by them), is encouraged to bring this order to the attention of that Court together with a prayer to dismiss said action and dissolve said lis pendens.

Dated 12/23/99 S/Malcolm Jones
Judge, Probate & Family Court

Stamped A true copy attest Robert E. Peck, Register

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
LAND COURT DEPARTMENT

BRISTOL, SS. Case No. 260693

FRED DAVIS
GERTRUDE DAVIS GOROD, PLAINTIFFS

vs.

ROBERT G. FUNKE, DEFENDANT

PLAINTIFF, FRED DAVIS' MOTION IN OPPOSITION TO DEFENDANT'S MOTION FOR DISMISSAL UNDER R.12(b)(9)

Now comes the plaintiff, Fred Davis in the above-cited action and opposes the Defendant's Motion for Dismissal Under R.12(b)(9).

PLAINTIFF'S MEMORANDUM IN SUPPORT THEREOF:

The defendant, Robert G. Funke is misrepresenting the facts and evidence to the Honorable Court.

SEE Defendant's Appendix A affixed to his answer, this document is erroneous and illegal document.

Finding of facts: Record title of subject property is held by the people: Edith Tabachnick 45%, Gertrude Davis Gorod 27.5% and Fred Davis 27.5% SEE Plaintiff's Document #1 affixed hereto:

The defendant, was appointed commissioner by Judge Malcolm Jones SEE Plaintiff's Document #2 Affixed hereto:

Defendant, Robert G. Funke never made oath that he would faithfully and impartially execute

the duties assigned by him.

Defendant, Robert G. Funke committed perjury in his Certificate of Service: "I hereby certify that I have served a true copy of the foregoing document upon all other parties of record by mail on January 5, AD2000".

The defendant did not serve his document to the plaintiff, Fred Davis on January 5, AD 2000 **SEE** Plaintiff's document #3 affixed hereto:

Defendant's affidavit and motion was done in bad faith with actual intent to deceive and fraud the court. Highenberg v. Northrup 33 N.E, 786, 787, 134 Ind 92 "Bad faith and fraud are synonymous". Groh v. Viglet 34 Ohio Law R 132 "An act done with the actual intent to mislead or deceive another is an act in bad faith".

Complaint and other factual allegations should be read liberally and less stringent than formal peadings drafted by lawyers" Hughes v. Rowe 449 U.S. 5, 9.

"Failure of the Complaint to set forth specific facts to support its general allegation was not sufficient ground for dismissal of the suit, civil procedure does not require to set out in detail the facts upon which it basis its claim" Conley v. Gibson 355 U.S. 14, CF Maty v. Grasselli Chemical Co.,303 U.S. 197 "the court rejects the approach that pleading is a game of skill in which one misstep may be decisive to the outcome and accept the principle of leading to the facilitate a proper decision on the merits".

In, Leclair v. Silberline 379 Mass 21 at 23 the evidence must be reexamined in light most favorable to the plaintiff.

Plaintiff Fred Davis, filed his Complaint in the Land Court on December 7, 1999.

Defendant filed his hearing on December 23, 1999, which is after the fact when the plaintiff filed his action in the Land Court.

Therefore, based on the foregoing facts and evidence the plaintiff request the Honorable Court to allow his motion and deny the defendant's motion to dismiss.

By,
s/ Fred Davis
353 Bryant Street
Malden, Ma 02148

CERTIFICATE OF SERVICE

I, certify that I mailed a true copy of the foregoing Opposition to: Mr. Robert G. Funke 58 Tremont Street P.O Box 628 Taunton, Ma 02780 postage prepaid.

Date 1-14-2000 s/Fred Davis

FINDINGS OF FACT

1. Record title to subject property is held by the following people:

| | |
|---|---|
| Edith Tabachnick | Gertrude Davis Gorod |
| Petitioner | Pro Se Respondent |
| 45% | 27.5 |

Fred Davis
Respondent
27.5%

2. In February 1995, the house that was standing on 1667 Broadway burned down. At that time respondent Fred Davis was the administrator for the estate and had not kept any insurance on the house.
3. The assessed value of the property as determined by the Town of Raynham Real Estate Tax appraisal on April 16, 1996 is $63,400.00 (1667 Broadway) and $44.600.00 (1.2 Acres) for a combined value of $108,000.00.
4. The petitioner retained the services of an appraiser that the assessed value was in fact approximately the same as fair market value.
5. The court finds that the property does not lend itself to division, setting aside of any portion, or allocation between the title holders and would in fact produce more value if sold together, or as two separate parcels. Therefore, a private sale would be the most advantageous division of the property.

**PLAINTIFF'S DOCUMENT #1**

33 Mass. App. Ct. 333, quoting Clough v. Cromwell, 250 Mass. 324 (1927) and Mello v. Mello 322 Mass. 68, 69(1947).

4. The responsibility of deciding whether the real estate is to be divided or sold is upon the Probate Court. Platts v. Wronski 15 Mass. App. Ct. 30,34 (1982) citing Clough v. Cromwell 250 Mass. 324 (1927) and Newhall, Settlement of Estate §§ 308-314 (4th ed. 1958).
5. A sale of subject real estate is in order and an appropriate disbursement of the proceeds thereby result, will establish closure to this acrimonious affair.
6. Attorney Robert Funke of Taunton shall be appointed as commissioner.

Date 10/23/97

s/ Malcolm Jones
Judge of the Probate
and Family Court

**PLAINTIFF'S DOCUMENT #2**

ROBERT G. FUNKE
58 TREMONT STREET
P.O. BOX 628
TAUNTON, MASSACHUSETTS 02780

**POSTMARK DATE JANUARY 8, 2000**

Mr. Fred Davis

353 Bryant Street

Malden, Ma 02148

**PLAINTIFF'S DOCUMENT #3**

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

LAND COURT DEPARTMENT

BRISTOL, SS. CASE NO. 260693

FRED DAVIS
GERTRUDE DAVIS GOROD,
PLAINTIFFS

VS.

ROBERT G. FUNKE, Defendant

PLAINTIFF, GERTRUDE DAVIS GOROD'S MOTION IN OPPOSITION TO DEFENDANT'S MOTION FOR DISMISSAL UNDER R. 12 (b)(9)

Now comes the plaintiff, Gertrude Davis Gorod in the above-cited action and opposes the Defendant's Motion For Dismissal Under R. 12(b).

PLAINTIFF'S MEMORANDUM IN SUPPORT THEREOF:

The defendant, Robert G. Funke is misrepresenting the facts and evidence to the Honorable Court.

SEE Defendant's Appendix A affixed to his answer, this document is an erroneous and illegal document.

**Findings of Facts:** Record title to subject property is held by the following people: Edith Tabachnick 45%, Gertrude Davis Gorod 27.5% and Fred Davis 27.5% **SEE Plaintiff'S Document #1 AFFIXED HERETO:**

The defendant was appointed commissioner by Judge Malcolm Jones **SEE Plaintiff's Document #2**

**AFFIXED HERETO:**

Defendant Robert G. Funke never made oath that he would faithfully and impartially execute the duties assigned by him.

Defendant, Robert G. Funke committed perjury in his Certificate of Service: " I hereby certify that I have served a true copy of the foregoing document upon all other parties of record by mail on January 5, AD 2000". **SEE Plaintiff's DOCUMENT #3 affixed HERETO:**

Defendant's affidavit and motion was done in bad faith with actual intent to deceive and fraud the court. **HIGHENBERG v. NORTHRUP 33 N.E. 786, 787. 134 Ind 92 "Bad faith and fraud are synonymous". GROH v. VIGLET 34 Ohio Law R 132 "An act done with the actual intent to mislead or deceive another is an act in bad faith".**

**"Complaint and other factual allegation should be read liberally and less stringent than formal pleadings drafted by lawyers" HUGHES v. ROWE 449 U.S. 5, 9.**

**"Failure of the Complaint to set forth specific facts to support its general allegation was not sufficient ground for dismissal of the suit, civil procedure does not require to set out in detail the facts upon which it basis its claim" CONLEY v. GIBSON 355 U.S. 14, C.F. Maty v. GRASSELLI CHEMICAL CO.,303 U.S. 197 "the court rejects the approach that pleading is a game of skill in which one misstep may be decisive to the outcome and accept the principle that the purpose of leading is to facilitate a proper**

**decision on the merits".**

**In, LECLAIR v. SILBERLINE 379 Mass 21 at 23 the evidence must be reexamined in light most favorable to the plaintiff.**

Plaintiff, Gorod filed her Complaint in the Land Court on December 7th 1999.

Defendant, Funke filed his hearing on December 23, 1999, which is after the fact when the plaintiff filed her action in the Land Court.

It is the plaintiff's understanding pursuant to the Rules of the "Commission on Judicial Conduct that: (1) A judge does not have the right to prejudge an action. (2) A judge does not have the right to give legal advise, suggest what actions lawyers are to file in other courts. (3) A judge does not have the right to instruct other judges what decision they are to make.

**SEE THE MATTER OF JUDGE JOHN A. MARKEY & JUDGE PRUDENCE MCGREGOR JUDGES IN THE BRISTOL DISTRICT COUNTY COURT SYSTEM**

**"Supreme Judicial Court of Massaachusetts Argued June 10, 1998, Decided July 14, 1998. Mass. 797 (1998)**

**Wherefore, Based on the foregoing facts and evidence the plaintiff, Gertrude Davis Gorod requests the Honorable Court to deny the defendant's motion.**

**By,**
**s/ Gertrude Davis Gorod**
**371 Bryant Street**
**Malden, Ma 02148**

FINDINGS OF FACT

1. Record title to subject property is held by the following people:

| | |
|---|---|
| Edith Tabachnick | Gertrude Davis Gorod |
| Petitioner | Pro Se Respondent |
| 45% | 27.5 |

Fred Davis
Respondent
27.5%

2. In February 1995, the house that was standing on 1667 Broadway burned down. At that time respondent Fred Davis was the administrator for the estate and had not kept any insurance on the house.
3. The assessed value of the property as determined by the Town of Raynham Real Estate Tax appraisal on April 16, 1996 is $63,400.00 (1667 Broadway) and $44,600.00 (1.2 Acres) for a combined value of $108,000.00.
4. The petitioner retained the services of an appraiser that the assessed value was in fact approximately the same as fair market value.
5. The court finds that the property does not lend itself to division, setting aside of any portion, or allocation between the title holders and would in fact produce more value if sold together, or as two separate parcels. Therefore, a private sale would be the most advantageous division of the property.

**PLAINTIFF'S DOCUMENT #1**

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5. A sale of subject real estate is in order and an appropriate disbursement of the proceeds thereby result, will establish closure to this acrimonious affair.
6. Attorney Robert Funke of Taunton shall be appointed as commissioner.

Date 10/23/97

s/ Malcolm Jones
Judge of the Probate
and Family Court

ROBERT G. FUNKE
58 TREMONT STREET
P.O. BOX 628
TAUNTON, MASSACHUSETTS 02780

**POSTMARK DATE JANUARY 6, 2000**

**Ms. Gertrude Davis Gorod**

**371 Bryant Street**

**Malden, Ma 02148**

**PLAINTIFF'S DOCUMENT #3**

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
Department of the Trial Court
Miscellaneous Case No. 260693

FRED DAVIS & another,1
Plaintiffs

vs.

ROBERT G. FUNKE, Defendant

**JUDGMENT**

By complaint filed on December 7, 1999, plaintiffs seek to establish their ownership of certain land by adverse possession.

An order of today's date is entered, allowing defendant's motion to dismiss the complaint in accordance with that order, it is hereby

ORDERED AND ADJUDGED THAT THE COMPLAINT IS DISMISSED.

By the Court (Green, J.)

Typed Charles W. Trombly, Jr.
Recorder

Dated: January 19, 2000

---

1 Gertrude Davis Gorod

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

1412 COURTHOUSE, BOSTON, MASSACHUSETTS 02108

(617) 557-1020

Fred Davis
353 Bryant Street
Malden, Ma 02148

RE: No. DAR-11202

FRED DAVIS & another

vs.

ROBERT FUNKE

NOTICE OF DENIAL OF D.A.R. APPLICATION

Please take note that the above-captioned Application for Direct Appellate Review has been considered by the Court and is denied.

TYPED/ Susan Mellen, Clerk

Dated: March 29, 2000

To: Fred Davis
Gertrude Davis Gorod
Robert Funke